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**BEFORE THE ARIZONA CORPORATION COMMISSION****COMMISSIONERS**

JEFF HATCH-MILLER, Chairman  
WILLIAM A. MUNDELL  
MIKE GLEASON  
KRISTIN K. MAYES  
BARRY WONG

Arizona Corporation Commission

**DOCKETED**

DEC 21 2006

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IN THE MATTER OF THE APPLICATION OF  
TACNA WATER MANAGEMENT COMPANY TO  
EXTEND ITS CERTIFICATE OF CONVENIENCE  
AND NECESSITY IN YUMA COUNTY,  
ARIZONA.

DOCKET NO. W-01344A-04-0815

DECISION NO. 69208**OPINION AND ORDER**

DATE OF HEARING:

February 21, 2006

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Teena Wolfe

APPEARANCES:

Steve Kelland and Don Kelland, on behalf of  
Tacna Water Management Company;John A. Weil, Weil & Weil, PLLC, on behalf of  
Tacna Water Management Company;Robert Chris Rockwell, on behalf of Mohawk  
Utility Company, Inc.; andDiane Targovnik and Linda M. Fisher, Staff  
Attorneys, Legal Division, on behalf of the  
Utilities Division of the Arizona Corporation  
Commission.**BY THE COMMISSION:**

On November 10, 2004, Tacna Water Management Company ("Company" or "Tacna"), filed an application for an extension of its Certificate of Convenience and Necessity ("CC&N") with the Arizona Corporation Commission ("Commission") to provide public water utility service to various parts of Yuma County, Arizona.

On October 31, 2005, Staff issued notice that the application had met the sufficiency requirements of A.A.C. R14-2-411(C).

On November 2, 2005, by Procedural Order, a hearing was scheduled for December 20, 2005, and other dates were set for publication of notice and procedural filings by parties to the proceeding.

On December 1, 2005, Staff filed its Staff Report recommending approval of the application

1 with conditions.

2 On December 16, 2005, by Procedural Order, the hearing in this matter was rescheduled for  
3 February 21, 2006, because Tacna did not file certification of publication and mailing by the date set  
4 forth in the November 2, 2005, Procedural Order.

5 On December 16, 2005, Tacna filed a letter indicating it had no objections to the Staff Report.

6 On December 21, 2005, Mohawk Utility Company ("Mohawk") filed a Motion to Intervene,  
7 which was granted by a Procedural Order issued January 5, 2006.<sup>1</sup>

8 On January 10, 2006, Tacna filed certification that public notice had been provided in  
9 accordance with the Commission's December 16, 2005, Procedural Order.

10 On February 21, 2006, a full public hearing was convened before a duly authorized  
11 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Company,  
12 Mohawk and Staff appeared with counsel. Following the hearing, the parties filed briefs on the issue  
13 of the proper procedural treatment of two existing CC&N extension applications that request  
14 overlapping service territory. Tacna, Mohawk and Staff subsequently made filings in the docket  
15 addressing the issue.

16 Following the parties' filings, a procedural conference was scheduled for the purpose of  
17 allowing the parties to discuss an appropriate means of clarifying the record regarding the location of  
18 Mohawk's facilities and customers in relation to the service territory extension requested by Tacna.  
19 On April 19, 2006, the procedural conference was held as scheduled. Tacna and Staff appeared  
20 through counsel and Mr. Rockwell appeared for Mohawk. Tacna and Mohawk indicated at the  
21 procedural conference that they had reached a preliminary settlement of the disputed issues, and that  
22 they planned to file a copy of a signed settlement agreement by May 19, 2006. On May 16, 2006,  
23 Tacna filed a copy of an agreement dated May 12, 2006 signed by Tacna and Mohawk, and on June  
24 2, 2006, Staff filed its Response to the Agreement, which included new recommendations in addition  
25 to those Staff made at the hearing. On June 15, 2006, a Procedural Order was issued directing Tacna  
26 to demonstrate its compliance with conditions imposed in Decision No. 68658 (April 16, 2006),

27 <sup>1</sup> Mohawk filed an application for extension of its CC&N in Docket No. W-02341A-06-0040 on January 24, 2006,  
28 requesting that its service territory be extended to include an area overlapping Tacna's requested area. According to  
Staff, Mohawk's application has not yet met the Commission's sufficiency requirements.

1 which set new rates for the Company. A Telephonic Procedural Conference was held in this matter  
2 on August 2, 2006, and on August 7, 2006, the Company filed in this docket a copy of a letter filed in  
3 the Decision No. 68658 docket requesting an extension of time for compliance with certain of those  
4 compliance requirements. After Staff filed a memorandum on October 25, 2006, recommending that  
5 the requested time extension be granted, a Procedural Order was issued in that docket on November  
6 14, 2006, granting an extension of time until December 31, 2006 for certain of the compliance filing  
7 requirements imposed by Decision No. 68658. This matter was then taken under advisement pending  
8 submission of a Recommended Opinion and Order.

9 \* \* \* \* \*

10 Having considered the entire record herein and being fully advised in the premises, the  
11 Commission finds, concludes, and orders that:

12 **FINDINGS OF FACT**

13 1. Tacna is an Arizona corporation engaged in the business of providing water utility  
14 service to approximately 152 service connections located approximately 40 miles east of Yuma along  
15 Interstate Highway 8 in Yuma County, Arizona.

16 2. Commission Decision No. 21804 (April 26, 1952) granted Roy B. Kelland dba Tacna  
17 Water Company a CC&N to provide water utility service. The Company became incorporated on  
18 April 8, 1992 as Tacna Water Company, Inc., and on December 11, 2000, the Company changed its  
19 name to Tacna Water Management Company. After the Company's corporate status was revoked on  
20 February 21, 2003, due to the Company's failure to file an annual report with the Commission's  
21 Corporations Division, Tacna was reinstated on June 30, 2005.

23 3. On November 10, 2004, the Company filed an application for an extension of its  
24 CC&N to provide water service in portions of Yuma County, Arizona.

25 4. Staff docketed a letter on October 31, 2005, indicating that the application was  
26 sufficient.

27 5. On November 2, 2005, a Procedural Order was issued setting this matter for hearing  
28

1 and setting associated procedural deadlines.

2 6. On December 1, 2005, Staff filed its Staff Report recommending conditional approval  
3 of the application.

4 7. On December 16, 2005, a Procedural Order was issued continuing the hearing and  
5 extending the timeclock in order to allow time for Tacna to accomplish proper publication and  
6 mailing of notice.

7 8. Notice of the application was provided in accordance with the law.

8 9. Mohawk was granted intervention in this matter by Procedural Order issued January 5,  
9 2006.  
10

11 10. A hearing on the application convened as scheduled on February 21, 2006. Tacna's  
12 Manager, Steve Kelland and its President, Don Kelland, appeared; Mohawk's Owner/President,  
13 Robert Chris Rockwell, appeared; and Staff appeared through counsel. Tacna, Mohawk, and Staff  
14 presented evidence. At the hearing, Mohawk requested that its CC&N extension request be  
15 considered in the same proceeding as Tacna Water's CC&N extension request.  
16

17 11. At the hearing, Staff stated that after Mohawk filed its competing CC&N application  
18 in Docket No. W-02341A-06-0040, Staff had evaluated its position in the Staff Report, and that Staff  
19 continued to recommend that Tacna be granted the service territory extension requested in its  
20 application.  
21

22 12. At the close of the hearing, the parties were directed to file legal briefs on the issue of  
23 the proper procedural treatment of two existing CC&N extension applications that request  
24 overlapping service territory. Tacna, Mohawk and Staff subsequently made filings in the docket  
25 addressing the issue.

26 13. Following the parties' filings, a Procedural Order was issued on April 7, 2006,  
27 scheduling a procedural conference for the purpose of allowing the parties to discuss an appropriate  
28

1 means of clarifying the record regarding the location of Mohawk's facilities and customers in relation  
2 to the service territory extension requested by Tacna.

3 14. On April 3, 2006, Tacna filed a copy of its franchise agreement with Yuma County.

4 15. On April 14, 2006, Mohawk made a filing in this docket consisting of a map depicting  
5 the location of Mohawk's service territory and facilities.

6 16. On April 19, 2006, a procedural conference was held as scheduled. Tacna and Staff  
7 appeared through counsel and Mr. Rockwell appeared for Mohawk. Tacna and Mohawk indicated at  
8 the procedural conference that they had reached a preliminary settlement of their disputed issues, and  
9 that they planned to file a copy of a signed settlement agreement by May 19, 2006.

10 17. On April 21, 2006, Staff filed a copy of a map that Mohawk furnished to Staff.

11 18. By Procedural Order issued May 3, 2006, the timeclock in this matter was extended to  
12 allow time for Tacna and Mohawk to jointly file either a settlement agreement resolving the issues in  
13 dispute between them, or a report on the status of their settlement negotiations.

14 19. On May 16, 2006, Tacna filed a copy of an agreement dated May 12, 2006 signed by  
15 Tacna and Mohawk ("Agreement").<sup>2</sup> The Agreement states, among other things, that Tacna amends  
16 its application in this docket to delete its request for certain territory, and includes as an Exhibit a  
17 legal description of Tacna's amended proposed service territory. A copy of the legal description of  
18 Tacna's amended proposed service territory is attached hereto and incorporated herein as Exhibit A.

19 20. On May 17, 2006, a Procedural Order was issued directing Staff to review the  
20 Agreement, including the amended legal description, and to file Staff's response to it on or before  
21 June 2, 2006.

22 21. On June 2, 2006, Staff filed its Response to the Agreement ("Response"). Staff's  
23 Response included its analysis of the settlement agreement, including the legal description of Tacna's  
24

25  
26  
27  
28 <sup>2</sup> An identical copy of the filing was also docketed in Docket No. W-02341A-06-0040, Mohawk's pending CC&N extension application docket.

1 amended proposed service territory, which is attached hereto as Exhibit A, and Staff's  
2 recommendation for additional conditions to be placed on Commission approval of Tacna's  
3 application.

4 22. On June 15, 2006, a Procedural Order was issued directing Tacna to demonstrate its  
5 compliance with conditions imposed in Decision No. 68658, which set new rates for the Company.

6 23. A Telephonic Procedural Conference was held in this matter on August 2, 2006. The  
7 Company, Mohawk and Staff appeared and discussed the issue of Tacna's compliance with  
8 Commission operating and filing requirements.

9 24. On August 7, 2006, the Company filed in this docket a copy of a letter filed in the  
10 Decision No. 68658 docket, in which Tacna requested an extension of time for compliance with  
11 certain of those compliance requirements. After Staff filed a memorandum on October 25, 2006 in  
12 the Decision No. 68658 docket recommending that the requested time extension be granted, a  
13 Procedural Order was issued in that docket on November 14, 2006, granting an extension of time  
14 until December 31, 2006 for certain of the compliance filing requirements imposed by Decision No.  
15 68658.

16 25. Staff's recommendations in this matter, as made in the Staff Report and at the hearing  
17 are as follows:

- 18 a. That Tacna be required to charge its authorized rates and charges in the  
19 extension area;
- 20 b. That Tacna be required to filed with Docket Control, as a compliance item in  
21 this docket, a Notice of Filing indicating Tacna has submitted for Staff's  
22 review and approval, a copy of the fully executed main extension agreements  
23 for water facilities for the extension area within 365 days of a Decision in this  
24 case;
- 25 c. That Tacna be required to filed with Docket Control, as a compliance item in  
26 this docket, a copy of the Arizona Department of Environmental Quality  
27 Approval to Construct ("ATC") for facilities needed to serve the requested  
28 areas within one year of the effective date of an order in this proceeding; and

- 1           d.     That the Decision granting the requested CC&N extension be considered null  
2           and void after due process should the Company fail to meet conditions "b" and  
3           "c" listed above.

4           26.    In its Response to the Agreement between Tacna and Mohawk, Staff recommended  
5           that Commission approval of Tacna's application be approved subject also to the following  
6           conditions:

- 7           a.     That Tacna be required to provide water service to all of Mohawk's existing  
8           customers in Sections 34 and 35, T8S, R17W, by May 12, 2008;  
9           b.     That Mohawk be required to continue to provide water service to its existing  
10          customers in Sections 34 and 35, T8S, R17W, until Tacna takes over; and  
11          c.     That Tacna and Mohawk be required to fully cooperate to insure that service to  
12          the existing customers in Sections 34 and 35, T8S, R17W is not interrupted.

13          27.    In Decision No. 60176 (May 16, 1997), the Commission ordered Mohawk to apply for  
14          an extension of its service territory to encompass an area in which Mohawk was providing service to  
15          customers, but which was located outside its certificated area.

16          28.    On December 22, 1997, Mohawk filed a CC&N extension application in compliance  
17          with Decision No. 60176.

18          29.    Decision No. 63260 (December 14, 2000) denied Mohawk's December 22, 1997  
19          CC&N extension request, because Mohawk was unable to demonstrate that it had sufficient water  
20          supply to serve the proposed extension area. However, in order to prevent any interruption of service  
21          to Mohawk's existing customers located outside its service area, Decision No. 63260 authorized  
22          Mohawk to continue to serve existing customers, and only existing customers, in the subject area.

23          30.    According to Staff's Response filed June 2, 2006, Mohawk is currently providing  
24          service to 16 customers located outside its certificated service territory.

25          31.    In the May 12, 2006 Agreement filed by Tacna and Mohawk, Mohawk states that it  
26          will continue to provide service to its existing customers under the authority granted in Decision No.  
27          63260. Tacna states in the Agreement that it will provide service to all of those existing customers  
28



1 within two years of the date of the Agreement. The Agreement states that Tacna and Mohawk  
2 expressly and explicitly agree that under no circumstances shall service to existing customers be  
3 terminated without prior approval and order of the Commission.

4 32. With the exception of Mohawk, no other municipal or public service corporations  
5 provide water service in Tacna's proposed service areas described in Exhibit A.

6 33. Tacna reported arsenic concentrations for its two wells at 30 ppb.

7  
8 34. As described in Decision No. 68658 (April 12, 2006), Tacna intends to finance Phase  
9 1 and Phase 2 of four phases of water system improvement construction associated with  
10 implementing the use of a 100 acre-foot allocation of Colorado River water, for which Tacna has  
11 contracted with the Wellton-Mohawk Irrigation and Drainage District ("Wellton-Mohawk"). Tacna  
12 obtained the Wellton-Mohawk allocation in order to meet the EPA's new maximum containment  
13 level ("MCL") requirement of 10 parts per billion ("ppb") for arsenic, and also in order to have  
14 adequate water supplies to serve the CC&N extension area requested in this application.

15  
16 35. Decision No. 68658 approved \$195,201 in WIFA financing and a \$65,067 equity  
17 infusion for Tacna's planned Phase 1 and Phase 2 water system improvements, which are needed for  
18 the 100 GPM water treatment system that will treat surface water and groundwater to enable Tacna to  
19 meet the EPA's new MCL of 10 ppb for arsenic.

20 36. Staff states that Phase 3 of Tacna's construction plan includes a new 300,000 gallon  
21 storage tank, a booster system and 15,000 feet of transmission main, at an estimated cost of  
22 \$307,500; and that Phase 4 consists of a second new 300,000 gallon storage tank, a booster system  
23 and 14,500 feet of transmission main, at an estimated cost of \$378,246. Staff states that Phases 3 and  
24 4 will be constructed using advances in aid of construction.<sup>3</sup>

25  
26  
27 <sup>3</sup> Staff states in the Staff Report that advances in aid of construction are often in the form of main extension agreements,  
28 which are a standard industry practice, and that the minimal acceptable criteria for line extension agreements between  
water utilities and private parties in Arizona are established by A.A.C. R14-2-406. Staff explains that such agreements  
generally require the developer to design, construct, and install (or cause to be installed) all facilities necessary to provide



1        37. Staff believes that Tacna's existing system and its proposed water system facilities  
2 have adequate source production and storage capacity to serve Tacna's existing and proposed  
3 extension areas within a conventional five-year planning period.

4        38. According to the Staff Report, with the exception of its arsenic MCLs, which have  
5 been addressed above, Tacna is in full compliance with the rules of the Arizona Department of  
6 Environmental Quality ("ADEQ") and is providing water which meets the requirements of the Safe  
7 Drinking Water Act and the MCL requirements.

8        39. Tacna is not located in an Active Management Area ("AMA") and is not subject to  
9 any AMA reporting and conservation requirements.

11       40. The Company is current on the payment of its property taxes.

12       41. The Company is currently in compliance with Commission operating and filing  
13 requirements. On June 15, 2006, a Procedural Order was issued in Docket No. W-01344A-05-0183  
14 et al., noting that Tacna appeared not to be in compliance with filing requirements imposed by  
15 Decision No. 68658, and giving Tacna an opportunity to demonstrate compliance prior to a  
16 Commission Decision in this matter. On June 30, 2006, Tacna filed a request in those dockets for an  
17 extension of time to make compliance filings required by Decision No. 68658. On October 25, 2006,  
18 Staff filed a memorandum in those dockets recommending that the requested time extension be  
19 granted, and on November 14, 2006, a Procedural Order was issued in Docket No. W-01344A-05-  
20 0183 et al. extending the time for compliance to December 31, 2006.

22       42. Tacna filed a Curtailment Plan Tariff on June 6, 2006.

24       adequate service to the development, and that the developer is required to pay all costs of constructing the required  
25 facilities necessary to serve the development. Staff states that upon acceptance of the facilities by the utility, the  
26 developer conveys the utility facilities through a warranty deed to the utility, and that utility companies will often refund  
27 to the developer 10 percent of the annual water revenue associated with the development over a period of 10 years. As set  
28 forth in Findings of Fact No. 25 above, Staff is recommending that as a condition of Commission approval of the  
application, Tacna be required to submit within 365 days of this Decision, as a compliance item in this docket, a Notice of  
Filing indicating that Tacna has submitted, for Staff review and approval, a copy of the fully executed main extension  
agreements for water facilities for the extension area, and that if Tacna does not timely comply with this requirement, that  
this Decision be considered null and void after due process.

1       43. Staff believes that there is a public need and necessity for water service to the  
2 requested extension areas and that the issuance of an extension to Tacna's CC&N is in the public  
3 interest.

4       44. Staff's recommendations as set forth in Findings of Fact Nos. 25 and 26 above are  
5 reasonable and should be adopted.

6       45. Because an allowance for the property tax expense of the Company is included in the  
7 Company's rates and will be collected from its customers, the Commission seeks assurances from the  
8 Company that any taxes collected from ratepayers have been remitted to the appropriate taxing  
9 authority. It has come to the Commission's attention that a number of water companies have been  
10 unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers,  
11 some for as many as twenty years. It is reasonable, therefore, that as a preventive measure the  
12 Company should annually file, as part of its annual report, an affidavit with the Utilities Division  
13 attesting that the Company is current in paying its property taxes in Arizona.  
14  
15

#### 16                                   CONCLUSIONS OF LAW

17       1. Tacna is a public service corporation within the meaning of Article XV of the Arizona  
18 Constitution and A.R.S. §§ 40-281 and 40-282.

19       2. The Commission has jurisdiction over Tacna and Mohawk and the subject matter of  
20 the application.

21       3. Notice of the application was provided in accordance with the law.

22       4. There is a public need and necessity for water utility service in the proposed service  
23 areas described in Exhibit A.

24       5. Tacna is a fit and proper entity to receive an extension of its CC&N.

25       6. The application to extend the CC&N to encompass the area described in Exhibit A  
26 should be granted subject to the conditions numbered "b" and "c" as set forth in Findings of Fact No.  
27 26.  
28

**ORDER**

IT IS THEREFORE ORDERED that the application of Tacna Water Management Company for an extension of its Certificate of Convenience and Necessity for the operation of a water utility in the areas more fully described in Exhibit A is hereby approved, conditioned upon Tacna Water Management Company's timely compliance with the following Ordering Paragraph.

IT IS FURTHER ORDERED that Tacna Water Management Company shall file with Docket Control, within 365 days, as a compliance item in this docket, a copy of the Arizona Department of Environmental Quality Approval to Construct for facilities needed to serve the extension areas conditionally granted herein.

IT IS FURTHER ORDERED that this Decision granting the extension of the Certificate of Convenience and Necessity to Tacna Water Management Company for the areas described in Exhibit A shall be null and void after due process if Tacna Water Management Company fails to timely comply with the Ordering Paragraph above.

IT IS FURTHER ORDERED that Tacna Water Management Company shall file with Docket Control, as a compliance item in this docket, a Notice of Filing indicating that it has submitted for Staff's review and approval, a copy of the fully executed main extension agreements for water facilities for the extension area within 365 days of a Decision in this case.

IT IS FURTHER ORDERED that this Decision granting the extension of the Certificate of Convenience and Necessity to Tacna Water Management Company for the areas described in Exhibit A shall be null and void after due process if Tacna Water Management Company fails to timely comply with the Ordering paragraph above.

IT IS FURTHER ORDERED that Tacna Water Management Company shall charge its existing rates and charges in the areas described in Exhibit A.

IT IS FURTHER ORDERED that Mohawk Utility Company shall continue to provide water service to its existing customers in Sections 34 and 35, T8S, R17W, until Tacna Water Management Company begins providing service to those customers.

IT IS FURTHER ORDERED that Tacna Water Management Company shall inform the Commission, by means of a compliance filing in this docket, 30 days prior to commencing the

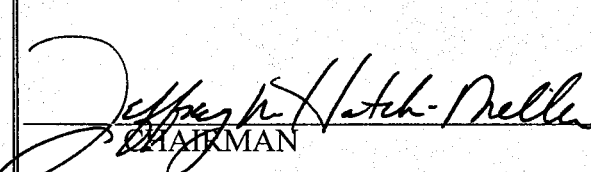
provision of service to those existing customers of Mohawk Utility Company currently receiving service from Mohawk Utility Company under authority of Decision No. 63620.

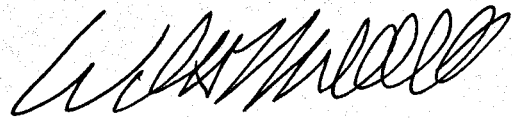
IT IS FURTHER ORDERED that Mohawk Utility Company shall inform the Commission, by means of a compliance filing in this docket, 30 days prior to ceasing the provision of service to those existing customers of Mohawk Utility Company currently receiving service from Mohawk Utility Company under authority of Decision No. 63620.

IT IS FURTHER ORDERED that Tacna Water Management Company shall annually file as part of its annual report, an affidavit with the Utilities Division attesting that the Company is current in paying its property taxes in Arizona.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

  
CHAIRMAN



COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 21<sup>st</sup> day of Dec., 2006.

  
BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

TW:mj

1 SERVICE LIST FOR: TACNA WATER MANAGEMENT COMPANY  
2 DOCKET NO.: W-01344A-04-0815  
3 Don Kelland  
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27  
28

**TACNA WATER COMPANY**  
**DOCKET NO. W-01344A-04-0815**  
**SECOND AMENDED LEGAL DESCRIPTION**  
**(Incorporating Terms of Settlement Agreement Between Tacna and Mohawk)**

Located in Yuma County, Arizona:

Township 8 South, Range 17 West

Section 21: SE1/4 of SE1/4

Section 22: S1/2

Section 24: All except the SE1/4

Section 25: All except that portion already certificated to Tacna Water Company further described as follows:

Beginning at the NW corner of the SW1/4 of the SE1/4 of said Section 25;

THENCE S 0°19' 20" E 500.12 feet to a point on the north right-of-way line of U.S.

Highway 80;

THENCE N 79°44'10" E along right-of-way line to its intersection with the east line of said Section 25;

THENCE N 0°28'40" W 1364.40 feet to the east 1/4 corner of said Section 25;

THENCE westerly to the NW corner of the NE1/4 of the SE1/4;

THENCE S 0°24' E 810.10 feet;

THENCE N 89° 43' E 977.30 feet;

THENCE S 0°28'40" 418.61 feet;

THENCE S 79°44'10" W 371.71 feet;

THENCE S 89°41'50" W 641.64 feet;

THENCE S 30 feet to the SE corner of the NW1/4 of the SE1/4;

THENCE S 89° 41' 50" W 1320.00 feet to the Point of Beginning.

Section 26: SE1/4

Section 27: All except the S1/2 SW1/4

Section 28: E1/2 of NE 1/4

Section 34: All

Section 35: W1/2 lying south of the north right-of-way line of U.S. Highway 80

Township 8 South, Range 16 West

Section 28: W1/2 of SW1/4

Section 33: NW1/4

Township 9 South, Range 17 West

Section 9: SE1/4

Section 10: S1/2